OUTLINE OF NATIONAL INSURANCE ACT (NIA) OF 2006

Optional Federal Charter and Regulation

Establishes a parallel, federal system of regulation and supervision for insurers and insurance producers (agents and brokers), similar to the dual banking system. Insurers and producers are free to elect federal or state regulation, charters and licenses. States would maintain responsibility of regulating state licensed insurers and producers.

The Office of National Insurance

An *independent* Office of National Insurance is created within the Department of the Treasury, similar to the OCC and OTS, and its Commissioner would be appointed by the President for a five-year term, subject to the advice and consent of the Senate.

National Life Insurers and National Property and Casualty Insurers

The NIA authorizes the chartering of two different types of insurance companies: National Life Companies and National Property and Casualty Companies. The underwriting of life insurance and P/C insurance is separated, but a holding company is permitted to own both a National Life Insurer and a National P/C Insurer.

National Agencies and Federally-Licensed Producers

The NIA authorizes the chartering and licensing of National Insurance Agencies and the licensing of federal insurance producers. A National Agency would be authorized to sell insurance for any federally chartered or State licensed insurer. A federally licensed insurance producer could sell insurance in any State on behalf of any National Insurer or a State Insurer. Additionally, a State licensed insurance producer could sell insurance on behalf of any insurer, including National Insurers, operating within the State in which the producer holds a license.

Conversions Between State and Federal Status

State licensed insurers would be free to convert to a national charter. Likewise, National Insurers would be free to convert to a State charter.

Applicable State Law

The activities and operations of federally chartered and licensed entities would be primarily subject to federal law. However, National Insurers and federally licensed insurance producers would be subject to certain categories of State law. These categories include: (1) State tax laws; (2) State unclaimed property and escheat laws; (3) State laws related to participation in assigned risk plans and other mandatory residual market mechanisms that are designed to make insurance available to those unable to obtain insurance in the voluntary market; and (4) State laws that provide for compulsory coverage of workers' compensation or motor vehicle insurance.

Regulatory and Supervisory Powers

The Commissioner has a comprehensive set of supervisory and regulatory powers. National Insurers are subject to examinations every three years, and National Agencies and federally licensed producers are subject to examination in response to a complaint or evidence of a violation of the law or regulations. National Insurers are subject to risk-based capital standards, investment standards, and asset and liability valuation requirements that are based upon model laws and regulations developed by the National Association of Insurance Commissioners (NAIC). National Insurers are subject to an independent audit committee requirement, limitations on dividends, and limitations on transactions with affiliates.

Enforcement Powers

The Commissioner is given enforcement powers patterned after those available to the federal banking agencies, permitting him/her to: (1) revoke or suspend a charter or license; (2) issue a cease and desist order, including an order that mandates affirmative actions, such as the sale of assets or the hiring of new management; (3) remove or suspend individual officers, directors, controlling shareholders, agents and consultants; and (4) impose civil fines of up to $1 million a day for violations of law or regulations or improper conduct.

Ombudsman

An Ombudsman is established within the Office of National Insurance and shall act as a liaison between the Office and any person adversely affected by the Office's supervisory and regulatory activities. Powers of the Ombudsman include: (1) assuring that complainants are encouraged to come forward and that confidentiality is preserved; (2) staying any appealable decision or action with prior consent of the Commissioner; and (3) reporting any weakness in policy or procedures and recommending changes for improvement.

Consumer Protection

There is established a Division of Consumer Protection within the Office of National Insurance. The Commissioner is directed to issue market conduct regulations to prevent unfair methods of competition and unfair and deceptive acts and practices by National Insurers, National Agencies and federally licensed insurance producers. At a minimum, these regulations must address the advertising, sale, issuance, distribution and administration of the insurance policies and products of National Insurers, as well as claims under such policies and products. The Commissioner is directed to establish a Fraud Division within the Office, and makes the commission of a "fraudulent insurance act" a federal crime. The NIA subjects National Insurers to federal antitrust laws.

Self Regulatory Organizations

The Commissioner is authorized to register and oversee self-regulatory organizations for federally chartered and licensed insurers, agencies and producers. Key powers of the Commissioner, such as chartering and merger and conversion determinations, may not be delegated to a self-regulatory organization.

Receiverships for Rehabilitation or Liquidation

The Commissioner may place a National Insurer into receivership for rehabilitation or liquidation for a number of circumstances, including the insolvency of a National Insurer. The Office of National Insurance must be appointed as the receiver, and as a receiver, the Office is given all of the powers of the Insurer. The Commissioner is directed to issue regulations governing receiverships that are based upon the Uniform Receivership Law adopted by the Interstate Insurance Receivership Compact Commission in September 1998.

Guaranty Fund

Additionally, National Insurers, as a general rule, must belong to the State guaranty associations in each State in which they offer insurance. These associations assume obligations to policyholders, up to certain limits, when an insurer is placed into receivership. If a State guaranty association does not provide policyholders with a level of protection equivalent to NAIC model standards, a National Insurer must join the National Insurance Guaranty Corporation (established under the NIA) which would provide such protections to policyholders. The Corporation would have separate accounts for life insurance and property and casualty insurance, and similar to State guaranty associations, would be post-funded with assessments of its member companies.

The SMART Act

State Modernization And Regulatory Transparency Act

Background

Who Wants Federal Regulation?

- Multi-state insurers want:
    - Regulatory parity with banks
    - Voice in Washington D.C.
    - Uniform national regulatory standards
        - Market Conduct and Compliance Reviews
        - Licensing: Agents & Companies
        - Speeding products to market
    - Reduced regulatory expense
    - Price deregulation
- Insurers argue that to provide such would mean:
    - More adequate & affordable coverage options
    - Better ability to work within marketplace

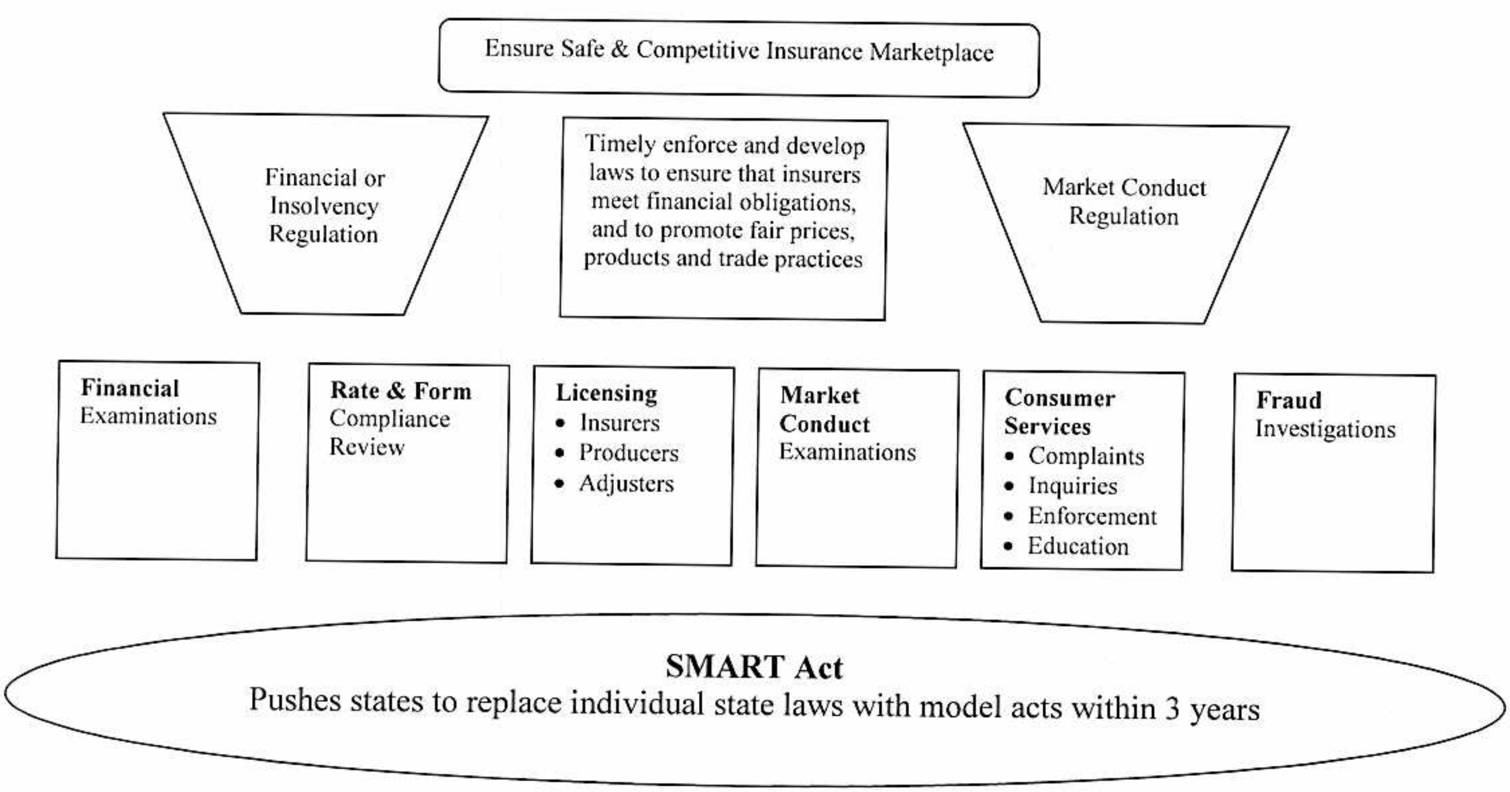
Federal Regulatory Alternatives:

- "Federal Tools" National Standards
- Optional Federal Charter
- Federal Regulation of all Interstate Insurance

Approach: "Federal Tools":

- Goal: Help States to promote uniformity
- How:
    - Defers to state regulatory structure
    - Federal muscle to enforce uniform state standards
- Costs little to implement

State Regulatory System



Key Features

Title II: Market Conduct

- Regular exams every 5 years by lead state, which works with other states
- Additional exams only "for cause"
- Written standards, interpretation by at least 10 states

Title III: Insurer Licensing

- Single point of data entry by NAIC ALERT
- Point of entry state applies its own laws
- Disapprovals based on written standard

Title IV: Producer Licensing

- States must have reciprocal licensing for producers within 2 years

TitleV: Life Insurance

- States must adopt interstate compact within 3 years
- Streamline forms approval process

Title VI: Commercial Property & Casualty Insurance

- Full implementation of SERFF and coordinated checklists
- Single choice-of-law for large multi-state policy holders

Title VII: Personal Lines of Property & Casualty Insurance

- Full implementation of SERFF and coordinated checklists
- Single point of filing with expedited review based on written standards

Title VIII: Surplus Lines

- All tax on multi-state placement paid to home state, who will pass to others
- Brokers to be included with NIPR
- "Sophisticated Buyers" can directly access market

Title IX: Reinsurance

- Reinsurers will only have to submit forms required in domiciliary state

Title X: Anti-fraud Network

- Monitored State Access to FBI database for fraud cases
- Confidentiality survives inter-agency sharing

Title XI: Viaticals

- States must implement Viatical Setttlement Act, which includes advertising and disclosure standards
- Requires licensing of producers

Title XII: Miscellaneous Insurance

- Place holder for insurance programs not included
- Promoting Uniform Standards and Uniform filing processes

Title XIII: Receiverships

- Based on Uniform Receivership law, which pre-dates Interstate Receivership Compact and current NAIC model

Title XIV: Financial Surveillance

- Promotes uniform procedures for self audit, accounting standards and administrative supervision

Title X: Federal State Partnership

- Panel of 6. 3 from NAIC, from federal (Treasury, SEC, FRB), Chair from industry
- Coordinates uniformity, arbitrates disputes arising out of act

Strength and Weaknesses

Strengths:

- Promotes
  - Uniformity
  - Transparency
  - Efficiency
  - Competition

Weaknesses:

- Devils in the details
  - Subjective Standards throughout = increased litigation
- Possible constitutional issues
  - Law of land is based on majority of states adopting associations models
- Insurers choosing states for licensing and filing may lead to race to bottom
- State regulation teeth are scaled back
- States lose some ability to address state specific issues
- States chance to lose benefit of premium tax

Forecast

- States will be actively engaged in shaping final result
- "Federal Tools" bill will remain focus
- Life industry is fertile ground for federal regulation
- Shift toward responsible regulation, not over-regulation
- Dangers remain from over-deregulating
- Local concerns will always be a top issue for states
- Expanded NAIC certification may be the answer